

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3660

Report Summary

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Ronald M. Sabraw, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665

DATE: April 17, 2000

SUBJECT: *Declaration of Lost Summons After Service* (adopt Form
982(a)(12)) (Action Required)

Issue Statement

Code of Civil Procedure section 417.30(b) provides that if a summons is lost after service, an affidavit of the person who served the summons may be returned with the same effect as if the summons itself were returned. Some courts have local forms for a declaration to be used to implement this provision, but no Judicial Council form has been adopted or approved for this purpose.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2000, adopt the *Declaration of Lost Summons After Service* (Form 982(a)(12)).

Rationale For Recommendation

Code of Civil Procedure section 417.30(b) provides: "If a summons is lost after service has been made but before it is returned, an affidavit of the person who made the service showing the time, place, and manner of service and facts showing that such service was made in accordance with this chapter may be returned with the same effect as if the summons itself were returned." The new *Declaration of Lost Summons After Service* would provide a simple, standard method for parties throughout the state to satisfy the requirements of section 417.30(b). Adopting such a form would promote uniformity of practice and decrease the cost of litigation.

Alternative Actions Considered

The committee considered proposals to include an order on the form and to change the form into an application with an attached declaration. The committee concluded that these proposals were not required by the statute and, if adopted, would make the form unnecessarily burdensome.

Comments From Interested Parties

A total of 28 comments were received. All but two commentators were in favor of the form. The most frequent comment was that the form should not include an order, a position with which the committee agreed. Most of those who commented on whether the form should be mandatory or optional favored making it mandatory, a position with which the committee also agreed.

A chart summarizing the comments and the committee's responses is attached at pages 5–11.

Implementation Requirements And Cost

The only cost incurred by the courts will be the annual cost of making copies of the form available to the public. However, there should be no significant change in cost for the courts that already provide a similar local form to the public. There should also be some savings to courts and litigants from having a standard, statewide declaration form available.

A copy of the form is attached at pages 3–4.

Comments for
Declaration of Lost Summons After Service
 (New Form 982(a)(12))

	Commentator	Position	Comment on Behalf of Group	Comments	Committee Response
1.	Deborah Mullin Family Law Facilitator Superior Court of Santa Barbara County	A		No specific comments.	No response necessary.
2.	Norma Castellanos-Perez Commissioner Superior Court of Tulare County	A		No specific comments.	No response necessary.
3.	Phrasel L. Shelton Rules Committee Chair Superior Court of San Mateo County	A	Y	No specific comments.	No response necessary.
4.	Merry Mayes Court Services Coordinator Superior Court of Stanislaus County	A		No specific comments.	No response necessary.
5.	Dennis Peter Maio Member Committee on Administration of Justice	A		No specific comments.	No response necessary.
6.	Cathie Rouse Superior Court Clerk II Superior Court of San Luis Obispo County	A		No specific comments.	No response necessary.
7.	Laura Masunaga Commissioner Superior Court of Siskiyou County	A		No specific comments.	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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8.	P. McCarron Court Operations Manager Superior Court of California	A		No specific comments.	No response necessary.
9.	Cathy Scoggin Court Clerk/Legal 4 Superior Court of Yolo County 725 Court Street, Room 103 Woodland, CA	A		No specific comment.	No response necessary.
10.	Marisol Alcantar Legal Assistant/Family Law Facilitator Superior Court of Kern County	A		(1) Re: Declaration of Lost Summons. Hooray!	No response necessary.
11.	Christine Copeland Family Law Facilitator Superior Court of Santa Cruz County	A		Can this be used in any family law action (dissolution, separation, nullity, UPA, petition for custody and support of minor child)?	Yes. (See Family Code § 210; CRC, rule 1206.)
12.	Stacy Mason Court Service Supervisor II Superior Court of Riverside County	A		Form should be for optional use only.	The committee disagreed. A mandatory form would encourage uniformity and simplify the process of satisfying the requirements of C.C.P. 417.30(b).
13.	Maggie Martinez Court Services Supervisor II Superior Court of Riverside County	A		Form should be optional.	The committee disagreed. A mandatory form would encourage uniformity and simplify the process of satisfying the requirements of C.C.P. 417.30(b).
14.	Richard Oliver Attorney San Joaquin County Bar Association	N		Form requires court approval (order) to allow filing of declaration. CCP § 417.30(b) does not require court order.	The committee agreed and would delete the order.

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15.	Carla Khal Facilitator Superior Court of Tulare County	AM		Our county does not require an Order–so leave off form. Items 7 and 8 don’t appear to be necessary – that information must be on the Proof of Service, which is still required.	The committee agreed and would delete the order. The subcommittee disagreed. The statute appears to require that the declaration contain the same information as the Proof of Service.
16.	Deborah DeMarchi Facilitator Superior Court of Mendocino County	AM		Our court does not require a court order and would probably prefer not to sign yet another order. I would prefer that the form be mandatory. This helps in assisting pro per litigants filing in other counties.	The committee agreed that a court order is unnecessary and that the form should be mandatory.
17.	Pauline Geasland/Sandy Walker Family Law Supervisor Superior Court of Sonoma County	AM		Why should this require a court order? We should just be able to accept the signed declaration under penalty of perjury.	The committee agreed and would delete the order.
18.	Sharol H. Strickland Court Executive Officer Superior Court of Butte County	A		Is the order necessary since the declaration is signed under penalty of perjury?	The committee agreed and would delete the order.
19.	Keri Griffith Court Program Manager Superior Court of Ventura County	AM		I feel that the Order should be on the same form as the declaration. I also feel that it should be a Mandatory Form. Page 2 should be revised, under d, last line, to state “Attached is a signed Notice and Acknowledgment of Receipt.”	The committee concluded that the order is unnecessary and agreed that the form should be mandatory. The committee concluded that item 7d should generally correspond to the Proof of Service (Summons), and changed the sentence to: “Attached is a completed copy of the notice and acknowledgment of receipt mailed to the sender.”
20.	Tressa S. Kentner	A		I agree with the proposed change (note that the	No response necessary.

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	Court Executive Officer Superior Court of San Bernardino County			current local form asks for information relating to efforts to find the original summons. Apparently, the Judicial Council deemed this information unnecessary).	
21.	Murray Gross Commissioner Superior Court of Los Angeles County	AM		<p>Language should be added to Item 9 as follows: “This declaration is returned in lieu of the original Summons <u>which was lost after service.</u>” The addition of this language would indicate that the original Summons was not lost before service. If the original Summons was lost before service, C.C.P. section 417.30(b) does not apply and a party may get another Summons issued before service is attempted.</p> <p>The order should not be omitted. The form should be mandatory and will simplify compliance with C.C.P. section 417.30(b) for both parties and attorneys.</p>	<p>The committee disagreed because this statement is not required by C.C.P. § 417.30(b) and would often not be personally known by the declarant.</p> <p>The committee disagreed that the order should be retained, but agreed that the form should be mandatory.</p>
22.	Larry Jackson Superior Court of Los Angeles County	AM		<p>The title of the order should be: “APPLICATION AND DECLARATION OF LOST SUMMONS AFTER SERVICE AND ORDER.”</p> <p>Add a number 11 to the order, which should read, “11. Declarant applies to the court for an order receiving this declaration in lieu of the Summons in the above entitled action.”</p> <p>Form should be modified with the following text to allow the option for the Court to deny an application for order: 1) Under the ORDER section, add the following text with a check-off box preceding the statement, “<input type="checkbox"/> APPLICATION GRANTED. THE</p>	<p>The committee disagreed that the declaration should be revised to consist of an application and declaration. The statute does not require an application, but only a simple declaration. (C.C.P. § 417.30(b).)</p> <p>The committee concluded that no order is necessary or desirable.</p>

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				<p>COURT ORDERS that the..." 2) Add another check-off box below this one and the following text, "<input type="checkbox"/> THE COURT DENIES the application."</p> <p>Form should be mandatory.</p>	<p>The committee agreed that the form should be mandatory.</p>
23.	Mark Lomax Management Analyst Superior Court of Alameda County	N		<p>This form is overkill and, I think, unnecessary. The proposed form is a duplication of the Judicial Council-adopted form for proof of service of summons (no. 982(a)(23) and the proofs of service on the back of the summons forms), with the addition of one sentence ("This declaration is returned in lieu of the original Summons") and a court order. And what is the need for a court order? The statute (Code Civ. Proc., sec. 417.30) is self-executing: "... an affidavit of the person who made the service . . . may be returned with the same effect as if the summons itself were returned;" no court order is required. Why couldn't a check box stating that the summons was lost after service be added to each summons proof of service form?</p>	<p>The committee disagreed that the form is overkill. It thought that there is a benefit to having a separate form entitled, "Declaration of Lost Summons After Service" to be used to satisfy the requirements of C.C.P. § 417.30(b).</p> <p>The committee agreed that the order should be omitted.</p>
24.	Rita G. Mah Family Law Facilitator Superior Court of San Mateo County	N		<p>Since the facts in support of the decl. is exactly the same as on the proof of service, can't we just have a check box with "<input type="checkbox"/> This declaration is returned in lieu of the original summons" on the proof of service form rather than a whole new form? Is there any need to have a court order?</p> <p>Add to current proof of service: "<input type="checkbox"/> I further declare that the original summons was lost after service was made but before it was returned</p>	<p>The committee disagreed that the form is overkill. It thought that there is a benefit to having a separate form entitled, "Declaration of Lost Summons After Service" to be used to satisfy the requirements of C.C.P. § 417.30(b).</p>

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				to court and that a diligent search has failed to locate said original summons.”	
25.	Terrie Jarrett Legal Process Clerk II Superior Court of Calaveras County	AM		In general, I would like the forms committee to consider for some documents that require clerks certification, space for the certification or an incorporated certification example of space need enclosed at the bottom.	Not applicable to this form.
26.	Gail Andler Judge Rules and Forms Committee Superior Court of Orange County Santa Ana, CA	AM	Y	<u>Form 982(a)(12):</u> Item 10, insert “street” before address; the order should be omitted as not required by C.C.P. 417.30(b). The form should be mandatory for any party wishing to file an affidavit pursuant to C.C.P. 417.30(b) so that the clerks will not have to review affidavits on non-Judicial Council forms in order to determine of the requirements of the statute are met; this will help to ensure that all required information is included and presented to the court in a coherent, concise manner, and will enable staff to quickly check for compliance with the code.	The committee agreed that the order should be omitted and that the form should be made mandatory.
27.	Virginia Davidow Director, Limited Civil Operations & Records Management Central Justice Center Santa Ana, CA	AM		<u>Form 982(a)(12):</u> An order is not necessary. This would only add a burden to the Court. Currently, this has been a clerical function and no order has been required. In addition: we have a similar local form. This would take its place.	The committee agreed and would delete the order.
28.	Amy Silva Director, Family Law/Probate Operations Superior Court of Orange County	AM		<u>Form 982(a)(12):</u> (1) On #2, should say, “Served a copy of the Summons....”	The committee agreed that the reference to “a copy” would be consistent with Form 982(a)(23) and item 8 of this form.

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	Orange, CA			(2) Text doesn't include statement that the Summons was lost. Suggest adding at end of #2:..., and subsequently lost the original Summons."	The committee concluded that such a statement is not required under C.C.P. § 417.30(b) and would often not personally be known by the declarant. Hence, it was not included.